

August 15, 2012

FROM: MIKE SANCHEZ, Planning Manager
Development Services Division

THROUGH: SOPHIA PAGOULATOS, Supervising Planner
Development Services Division

BY: JACK VAN PATTEN, AICP, Planner II
Development Services Division

AGENDA ITEM NO. VII-A
COMMISSION MEETING 8-15-12

APPROVED BY

DEPARTMENT DIRECTOR

SUBJECT: **CONSIDERATION OF APPEAL OF CONDITIONAL USE PERMIT APPLICATION NO. C-12-026 FILED AS AN AMENDMENT TO CONDITIONAL USE PERMIT APPLICATION C-99-051, LOCATED AT 1736 EAST BELMONT AVENUE (APN: 459-071-30)**

RECOMMENDATION

Staff recommends that the Planning Commission take the following action:

1. **ADOPT** Environmental Assessment No. C-12-026 Determination of a Class 1/Section 15301 (Permitting of Existing Facility) Categorical Exemption from the requirements of the California Environmental Quality Act;
2. **GRANT THE APPEAL AND APPROVE** Conditional Use Permit Amendment Application No. C-12-026 subject to new conditions of approval.

EXECUTIVE SUMMARY

The applicant, Dirk Poeschel, of Dirk Poeschel Land Development Services, Inc., on behalf of Devinder Dhariwal filed Conditional Use Permit Application No. C-12-026, as an amendment to C-99-051, requesting authorization to remove a condition of approval of Conditional Use Permit No. C-99-051, which condition reads: *'Beer and malt liquor in containers of 41 oz. or less shall not be sold in units of less than a six pack.'* All other conditions of approval were proposed to remain unchanged.

The project is located on the southwest corner of East Belmont Avenue and North Abby Street.

Staff recommends that the Planning Commission uphold the Appeal of Conditional Use Permit Application No. C-12-026, which requests the removal of the condition noted above. However instead of authorizing the removal of one condition, the Development & Resource Management Department now recommends that the Police Department Conditions of Approval of conditional use permit file C-99-051 be replaced in their entirety by the Police Conditions of Approval (Attachment __) that are currently used for off-sale alcohol uses. All other Conditions of Approval of C-99-051 would remain the same. The Department finds that by the Planning Commission adopting this recommendation, Conditional Use Permit No. C-12-026 does comply with Fresno Municipal Code Section 12-405-A-2-c, which states "The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located".

PROJECT INFORMATION

PROJECT	Conditional Use Permit Application No. C-12-026 requests authorization to remove a Condition of Approval of Conditional Use Permit No. C-99-051, which condition reads: <i>'Beer and malt liquor in containers of 41 oz. or less shall not be sold in units of less than a six pack.'</i> All other conditions of approval to remain unchanged.		
APPLICANT	Dirk Poeschel, of Dirk Poeschel Land Development Services, Inc.		
LOCATION	1736 East Belmont Avenue, located on the southwest corner of East Belmont Avenue and North Abby Street (APN: 459-071-30) (Council District 7, Councilmember Olivier)		
SITE SIZE	0.38-acres		
LAND USE	Existing	-	Commercial-Mixed Use, Level 2 (Central Area) Planned Land Use
ZONING	Existing	-	Same
PLAN DESIGNATION AND CONSISTENCY	Conditional Use Permit Application No. C-12-026 is proposed in accordance with the <i>commercial-mixed use, level 2 (Central Area)</i> land use identified in the Central Area Community Plan and the 2025 Fresno General Plan.		
ENVIRONMENTAL FINDING	A determination of Categorical Exemption, Section 15301/Class 1 of California CEQA Guidelines was made and Environmental Assessment No. C-12-026 (Categorical Exemption) was completed for this project and filed on August 15, 2012.		
PLAN COMMITTEE RECOMMENDATION	Council District 7 Implementation Committee has been suspended, and, therefore, has not reviewed this project.		
STAFF RECOMMENDATION	Staff recommends Approval, with conditions, of Conditional Use Permit Application No. C-12-026.		

BORDERING PROPERTY INFORMATION

	Planned Land Use	Existing Zoning	Existing Land Use
North	Commercial-Mixed Use Level 2 (Central Area) & Commercial-Mixed Use Level 1 (Central Area)	C-6, <i>Heavy Commercial District</i>	Commercial-Mixed Use Level 1 (Central Area)
South	Commercial-Mixed Use Level 2 (Central Area)	C-6, <i>Heavy Commercial District</i>	Commercial-Mixed Use Level 1 (Central Area)
East	Commercial-Mixed Use Level 2 (Central Area)	C-6, <i>Heavy Commercial District</i>	Commercial-Mixed Use Level 2 (Central Area)
West	Commercial-Mixed Use Level 2 (Central Area)	C-6, <i>Heavy Commercial District</i>	Commercial-Mixed Use Level 2 (Central Area)

ENVIRONMENTAL FINDING

The project is exempt from further environmental review pursuant to Section 15301/Class 1 of the State of California CEQA guidelines as the permitting and/or licensing of an existing public or private structures. Conditional Use Permit No. C-12-026 proposes to modify the conditions of approval for CUP C-99-051 related to a Type 20 ABC license; no changes to the existing convenience store are proposed. Therefore the project is exempt from further review under CEQA as the licensing of an existing facility. See Attachment A for Finding of Categorical Exemption.

BACKGROUND / ANALYSIS

The applicant, Dirk Poeschel, of Dirk Poeschel Land Development Services, Inc., on behalf of Devinder Dhariwal, has filed Conditional Use Permit Application No. C-12-026, requesting authorization to remove a Condition of Approval of Conditional Use Permit No. C-99-051, which condition reads: '*Beer and malt liquor in containers of 41 oz. or less shall not be sold in units of less than a six pack.*' All other conditions of approval to remain unchanged.

The project is located on the southwest corner of East Belmont Avenue and North Abby Street.

On August 29, 1995, the Fresno City Council adopted Resolution No. 95-227 officially delegating the Director of the Development Department as the authorized representative to issue findings and make determinations associated with the crime rate and the concentration or public convenience and necessity of proposed alcoholic beverage license locations pursuant to Section 23958 of the State of California Business and Professions Code.

On May 21, 1999, the Director approved Conditional Use Permit No. C-99-051 for a proposed food mart to include alcohol sales. After a review of the reported criminal activity in Police Reporting Zone No. 2556 and assessment of the concentration of similar alcoholic beverage sales outlets in Census Tract No. 06.00, the Director found that the public convenience and necessity could be met for the proposed off-sale beer and wine proposed by Conditional Use Permit No. C-99-051. This finding was also based on the Fresno Police Department's conditional support of the proposed alcoholic beverage sales use, subject to the applicant's compliance with the Police Department conditions, which include the condition that *'Beer and malt liquor in containers of 41 oz. or less shall not be sold in units of less than a six pack.'* This condition was also among the conditions of approval of the prior conditional use permit for the site: Conditional Use Permit No. C-97-132.

Immediately prior to the August 1, 2012, Planning Commission Public Hearing, the staff proposed, and the applicant accepted, that the existing Police Department Conditions of Approval of conditional use permit C-99-051 be replaced in their entirety by the Police Department Conditions of Approval (Attachment B) that are currently used for off-sale alcohol uses. Staff recommended this option in order to create a more "level playing field" among like business types. The replacement of the old (C-99-051) Police Department Conditions with the new Police Department conditions results in the following changes which staff feels will ensure that CUP Finding C (public welfare) can be made:

- Increased video surveillance requirements
- Increased employee education requirements
- Increased requirements related to the prevention of loitering
- More explicit terms of grounds for revocation
- More restrictions on the sale of single malt beverages

DISTRICT 7 PLAN IMPLEMENTATION COMMITTEE

The District 7 Plan Implementation Committee does not review special permit applications at this time.

NOTICE OF PLANNING COMMISSION MEETING

The Development and Resource Management Department mailed notices of this Planning Commission hearing to all surrounding property owners within 350 feet of the subject site on July 20, 2012, pursuant to Section 12-326-G-2 of the FMC. Only two comments have been received, to date: The Applicant's appeal and a statement in favor of the Department's denial received from the staff of the Downtown and Community Revitalization Division.

FINDINGS

Staff finds that with the new Police Department conditions imposed, all of the findings can be made as noted below:

Findings per Fresno Municipal Code Section 12-405-A-2	
a. <i>All applicable provisions of this Code are complied with and the site of the proposed use is adequate in size and shape to accommodate said use, and accommodate all yards, spaces, walls and fences, parking, loading, recycling areas, landscaping, and other required features; and,</i>	
Finding a:	Conditional Use Permit Application No. C-12-026 does not affect compliance with applicable codes, including parking, landscaping, walls, etc., because there is no new development proposed with this project.
b. <i>The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,</i>	
Finding b:	Adjacent streets were assessed during the initial development of the subject site to ensure that the development would have less than significant impacts on traffic and the surrounding community. Neither the retention nor the removal of the 'single-sale' condition of approval is expected to change this finding.
c. <i>The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located. The third finding shall not apply to uses which are subject to the provision of Section 12-306-N-30 of the FMC.</i>	
Finding c:	The proposed substitution of the presently issued Police Conditions of Approval for the Police Conditions of Approval now contained in C-99-051 shall not have a negative impact on both the subject site, and neighboring properties given that the change is expected to have no adverse affect on 'calls for service' to the Police Department.

Attachments:

- A. Environmental Assessment dated August 15, 2012
- B. City of Fresno Police Department Conditions of Approval, dated August 15, 2012

Attachment A

CITY OF FRESNO
CATEGORICAL EXEMPTION
ENVIRONMENTAL ASSESSMENT NO. C-12-026
THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY
EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS
PURSUANT TO ARTICLE 19 OF THE STATE CEQA GUIDELINES.

APPLICANT: Dirk Poeschel, of Dirk Poeschel Land Development Services, Inc
923 Van Ness Avenue, Suite 200
Fresno, CA 93721

PROJECT LOCATION: 1736 East Belmont Avenue, located on the southwest corner of East Belmont Avenue and North Abby Street (APN: 459-071-30)
(Council District 7, Councilmember Olivier)

PROJECT DESCRIPTION: Conditional Use Permit Application No. C-12-026 requests authorization to remove a Condition of Approval of Conditional Use Permit No. C-99-051, which condition reads: *'Beer and malt liquor in containers of 41 oz. or less shall not be sold in units of less than a six pack.'* All other conditions of approval were proposed to remain unchanged. The Department of Development and Resource Management is recommending modified conditions of approval that match the Police Department conditions in use today for similar types of uses.

This project is exempt under Section 15301/Class 1 of the State of California CEQA Guidelines.

EXPLANATION:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

Conditional Use Permit No. C-12-026 proposes to modify the conditions of approval for CUP C-99-051 related to a Type 20 ABC license; no changes to the existing convenience store are proposed. Therefore the project is exempt as the licensing of an existing facility.

There is no substantial evidence in the record that any of the exceptions to these Categorical Exemptions, set forth in CEQA Guidelines section 15300.2, apply to this project

Date: August 15, 2012

Prepared By: Jack Van Patten, AICP
Planner

Submitted By:


Sophia Pagoulatos
Supervising Planner
City of Fresno
Development & Resource Management
Department
(559) 621-8277

Attachment B



Mariposa Mall
P.O. Box 1271
Fresno, CA 93715-1271

Police Department

Jerry P. Dyer
Chief of Police



City of Fresno, Development Department
Director of Planning & Development.
Special Permit, Conditional Use Permit
2600 Fresno Street
Fresno, California, 93721-3604

Attn.

Re: SPECIAL PERMIT NO. C- ABCUP

Fresno, Ca 93
A.P.N.

Dear

Pursuant to your Department's request, the Fresno Police Department has reviewed the special permit application for property located at

The Fresno Police Department's primary concern with the application is the propensity of the operations on the premises to generate calls for police service, and therefore, be detrimental to the public welfare.

As you know, to approve any Conditional Use Permit, the City must make the following findings:

1. All applicable provisions of the Fresno Municipal Code are complied with and the site of the proposed use is adequate in size and shape to accommodate the use, and all yards, spaces, walls and fences, parking, loading, recycling areas, landscaping, and other required features; and,
2. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,

Revised March 17, 2009

Professional, Effective, Timely

3. The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located. This third finding shall not apply to uses which are subject to the provisions of Section 12-306-N-39 of the Fresno Municipal Code (Regulating Adult Businesses).

The conditions are established to ensure public safety, and to minimize any impact to the surrounding area. If approved, this Conditional Use Permit would allow for an **off-sale Type ABC license**. We request the following conditions be included as Conditions of Approval for Conditional Use Permit Application No. C- -ABCUP. These conditions will help to insure maintain an environment that is least likely to generate criminal activity, public complaints and police calls for service.

The Fresno Police Department is not in opposition of this Conditional Use Permit, providing the applicant agrees to the listed conditions. If the following conditions are not included as conditions of approval of CUP No. C- -ABCUP the Fresno Police Department shall oppose the approval of this Conditional Use Permit, and shall appeal such approval to the Planning Commission. As such, we request that you provide Detective Santellano with notice of the Director's decision regarding this Conditional Use Permit as well as a complete copy of the conditions of approval, if the Director approves the Conditional Use Permit.

Requested Conditions of Approval:

I. Fresno Municipal Codes

The applicant shall comply with all applicable provisions of the Fresno Municipal Codes ("FMC"), including but not limited to:

- FMC 9-502 (Amusement Devices - Permit Required)
- FMC 9-1803 (Hours of Operation of Billiard Hall)
- FMC 9-1804 (Restriction on Attendance of Minors in Billiard Rooms)
- FMC 9-1805 (Minors allowed: Family Billiard Rooms)
- FMC 9-1905 (Public Dancing - Permit Required)
- FMC 10-105 (Noise Ordinance)
- FMC 10-708 (Unlawful Nuisances - High Calls for Police Service)
- FMC 12-224 (C-M Zone, Adult Theater activities not permitted, see 12-105-T-1.1 for definition of Adult Theater, and 12-306-N-30 for additional limitations on Adult Business activities.)

A current version of the Fresno Municipal Code may be viewed at the City of Fresno's website: www.Fresno.gov. The link to the FMC is located on the Home Page of that website.

2. State and Federal Law

The applicant shall comply with all applicable state and federal law, rules and regulations, including but not limited to the following California Business and Professions Code sections and ABC rules:

- BP 24046 (Required to Post ABC License on Premises)
- BP 25612.5 (Loitering, Open Alcoholic Beverage Containers, Consuming Alcoholic Beverages on Premises, Exterior Lighting, Litter Removal, Graffiti Removal, Signs and Barriers in Windows and Doors, Public Phones Blocked From Incoming Calls, Areas to Display Harmful Matter, Required Copies of Operating Standards Available for Public Viewing)
- BP 25631 (No sale of alcoholic beverages between 2:00 a.m. and 6:00 a.m.)
- BP 25665 (Minors Remaining in Public Premises)
- ABC Act Rule 106 (No Buy One Get One Free Drinks)
- ABC Act Rule 107 (No One Under 21 Allowed Signs Posted)
- ABC Act Rule 139 (Interior Lighting Required for Identification of Patrons)

3. Video Camera

Prior to exercising any privileges granted by CUP No. C- ABCUP the applicant must install a fully functional color digital video camera system ("System") that meets the following requirements:

- 3.1 The System must continuously record, store, be capable of playing back images and be fully functional at all times, including during any hours the business is closed. The System must be maintained in a secured location inside of the business.
- 3.2 The System shall have the correct date and time stamped onto the image at all times.
- 3.3 The camera storage capacity should be for at least one week (seven calendar days). Such cameras must be capable of producing a retrievable and identifiable image than can be made a permanent record and that can be enlarged through projection or other means.
- 3.4 Digital video recorder must be capable of storing at least seven days of real-time activities.
- 3.5 The System shall be capable of producing a CD or digital playback feature and may be provided to an authorized representative of the Fresno Police Department within 24 hours of the initial request relating to a **criminal investigation only**.

3.6 The interior of the business must have at least one camera placed to focus on each cash register transaction to include the clerk as well as the customer waiting area. There should be at least one camera focused on the entrance and the camera view should clearly show an image of the color coded height tape installed on the inside of the door jamb.

3.7 There shall be four (4) exterior cameras placed so as to record activities in the primary customer parking areas of their business. These cameras should be of sufficient quality to be able to identify persons and or vehicles utilizing the business parking lot.

3.8 All interior cameras shall record in color.

3.9 All exterior cameras shall record in color and have automatic low light switching capabilities to black and white. Exterior cameras should be in weatherproof enclosures and located in a manner that will prevent or reduce the possibility of vandalism.

It is recommended, but not required, that the owner/operator provide the IP address(s) to the Fresno Police Department Communications Center for any system that is browser-based or viewable from a remote site. The Fresno Police Department may perform periodic inspections of the System to ensure compliance with these specifications. An inoperable System may be good cause for seeking revocation of this Conditional Use Permit.

4. ABC Education

Any and all employees hired to sell alcoholic beverages shall provide evidence that they have either:

4.1 Completed training from the State of California Department of Alcoholic Beverage Control--Fresno District Office-administered "Leadership and Education in Alcohol and Drugs" (LEAD) Program as confirmed by receipt of an ABC-issued certificate of completion; or,

4.2 Completed equivalent training acceptable to the ABC-- Fresno District Office to ensure proper distribution of beer, wine, distilled spirits, tobacco, and inhalants to ensure proper distribution of beer, wine, distilled spirits, tobacco, and inhalants to adults of legal age.

If any prospective employee designated to sell alcoholic beverages, tobacco or inhalants does not currently have such training then:

4.3 The ABC-licensed proprietors shall have confirmed with the Development Department within 15 days of the final approval of the CUP or within 15 days of

the opening to the public of a new store, whichever is later, that a date certain has been scheduled with the local ABC Office for said prospective employees to take the LEAD Program course; and

- 4.4 Within 30 days of taking said course the employee(s) or responsible employer shall deliver to the Planning Department each required LEAD Program Certificate evidencing completion of said course.

5. Sale of Malt and Wine-Cooler Alcoholic Beverages

5.1 Malt liquor or malt beverage products shall not be sold in less than six (6) pack quantities for sale. They must be sold in manufacturer pre-packaged multi-unit quantities. This will include all sizes of containers.

5.2 All wine cooler products shall not be sold in less than four (4) pack quantities for sale. They must be sold in manufacturer pre-packaged multi-unit quantities.

5.3 Single Sales of any other beer product, of any size, is permitted.

6. Wine Alcohol Per Volume

No wine shall be sold with an alcoholic content greater than 24% volume, except premium dessert wines priced at \$10.00 or more.

7. Non-refrigerated Alcoholic Beverages

Non-refrigerated "hard" liquor or "distilled spirits," shall be placed within the cashier's area or, shall be located either in a locked cabinet, or other locked shelving system, with access controlled with either manual, remote control locking devices or other appropriate and acceptable locking systems approved in writing by the Fresno Police Department. During the hours of midnight and 2:00 a.m. the cabinet or shelving system shall be locked and opened only after an authorized employee has verified that the customer seeking to purchase items within the cabinet or shelving system is of "legal age."

8. Posting Property

The applicant shall post the property with the appropriate Fresno Municipal Code signs advising that consumption of alcoholic beverages, gambling, trespassing or loitering will be in violation of municipal ordinances. The applicant must send a letter to the Fresno Police Department, signed and dated by the applicant, every 180 days that authorizes FPD peace officers to enter the applicant's real property and/or establishment to enforce against the aforementioned activities at the business. The owners and employees are responsible for abating those activities when they occur during business hours.

9. **Consumption of Alcoholic Beverages and Loitering.**

- 9.1 The establishment shall not allow alcoholic beverages to be consumed outside the building premises or any other adjacent property under its control. No alcoholic beverage will be consumed on any property adjacent to the premises (i.e., parking lot and sidewalks). If the alcoholic beverages are consumed on the exterior portion of adjacent property not owned or controlled by the applicant, the applicant shall immediately report such consumption to the Fresno Police Department.
- 9.2 The establishment shall not allow any loitering on building premises or any adjacent property under its ownership or control.
- 9.3 The establishment shall not allow any gambling on building premises or any adjacent property under its control.

10. **Property Responsibility**

"Frequent" responses by the Fresno Police Department arising out of or relating to the operation or management of the real property owned or controlled by the permittee causing any combination of the following: animal disturbances; violent criminal acts; illegal consumption of intoxicants in public view; gaming activities; and juvenile disturbances, or any of the other activities set forth in the Fresno Municipal Code section 10-708(g) may result in an FPD recommendation to the Director of Planning and Development to commence proceedings to revoke the Conditional Use Permit for violation of the Management of Real Property Ordinance. In addition to recommending the commencement of revocation proceedings, the FPD may pursue any of the other remedies set forth in FMC, section 10-710, including assessing fines against the proprietor for the violations of the Management of Real Property Ordinance.

"Frequent" means response by the Fresno Police Department is occurring more than 1.5 times the average number of such responses (3 calls for every 2) for property of a similar size and character within the same policing district.

11. **The establishment shall ensure that all employees involved, either directly or indirectly, in the sale of alcoholic beverages are aware of and comply with these conditions. The establishment shall have each employee sign a written acknowledgment that he/she has reviewed and understood each of these conditions.**

The written acknowledgement shall be maintained by the establishment and made available to the Fresno Police Department upon reasonable request.

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FRESNO POLICE DEPARTMENT

Officer _____ # _____

District POP

Sergeant _____ # _____

District-Det/POP

Captain _____

District Commander